(3)
Supreme Court, U.S.
FILED
991194 JAN 14 2000
OFFICE OF THE CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1999

LEW WARDEN,

Petitioner,

vs

THE STATE BAR OF CALIFORNIA,
LORNA MAYNARD, CAROLE ROSSI,

Respondents.

On Petition For Writ Of Certiorari
To The Supreme Court Of The
State Of California

APPENDICES TO PETITION FOR WRIT OF CERTIORARI

VOL. II
Appendices D - F, pp. 123-204

Lew Warden
Petitioner Pro Se.
9121 E. Tanque Verde #105-146
Tucson, Arizona 85749
Tel: (520) 760-2809

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APPENDIX D

ALAMEDA COUNTY SUPERIOR COURT JUDGMENT

ENDORSED
FILED
ALAMEDA COUNTY
Oct 18 1995
CLERK OF THE SUPERIOR COURT
By KATE BUCKNER, Deputy

DIANE C. YU, State Bar No. 78676
[Other counsel omitted.)
OFFICE OF GENERAL COUNSEL
THE STATE BAR OF CALIFORNIA
555 Franklin Street
San Francisco, CA 94102
[Other counsel omitted.)

Attorneys for Defendants Lorna Maynard, Carole Rossi, and the State Bar of California

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

LEW WARDEN,	)	Case No.
Plaintiff,	)	734372-4
	)	
v.	)	JUDGMENT BY
	)	COURT UNDER
THE STATE BAR OF CALIFORNIA, et al.,	)	CODE OF CIVIL PROCEDURE Sec. 437c
	)	
Defendants.	)	
	)	

This Court on September 14, 1995, having granted the motion of defendants State Bar of California, Lorna Maynard and Carole Rossi for summary adjudication of issues and having so determined that there was no

admissible evidence [Fn. 1] to support any of the several claims or causes of action for injunctive and/or declaratory relief and/or for recovery of a monetary damage, as attempted to be alleged in plaintiff's complaint, and having additionally determined that defendants and each of them are immune from liability for any such damages, and there having been no alleged claim or causes of action in plaintiff's complaint not so disposed of by said order of September 14th, now, therefore,

IT IS ORDERED, ADJUDGED AND DECREED that plaintiff shall take nothing, and that defendants State Bar, Maynard and Rossi shall recover from plaintiff costs of suit.

Dated: Oct 18, 1995.

SANDRA MARGULES
Judge of the Superior Court.
PURSUANT TO C.C.P. 635
for Hon. JAMES R. LAMDEN,
Judge.

Fn. 1. In ruling on said motion the Court considered only those portions of plaintiff's evidentiary submissions in opposition to the motion that were competent, relevant, and admissible. Biljac v. First Interstate (1990) 218 CA3d 1410.

ORDER GRANTING SUMMARY JUDGMENT

ENDORSED
FILED
ALAMEDA COUNTY
Sep 14 1995
RONALD G. OVERHOLT, EXEC.OFF.Clerk
By Phil Seane

DIANE C. YU, State Bar No. 78676
[Other counsel omitted.)
OFFICE OF GENERAL COUNSEL
THE STATE BAR OF CALIFORNIA
555 Franklin Street
San Francisco, CA 94102
[Other counsel omitted.)

Attorneys for Defendants Lorna Maynard, Carole Rossi, and the State Bar of California

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

LEW WARDEN,	)	Case No.
Plaintiff,	)	734372-4
	)	
v.	)	ORDER GRANT-
	)	ING SUMMARY
THE STATE BAR OF CALIFORNIA, et al.,	)	ADJUDICATION OF ISSUES
	)	
Defendants.	)	
	)	

The motion of defendants the State Bar of California, Lorna Maynard and Carole Rossi's (hereinafter "Defendants") motion for summary judgment came on regularly for hearing in the above-entitled Court, before the Honorable JAMES R. LAMBDEN, Judge pre-

siding. Colin P. Wong and Robert M. Sweet appeared as attorneys for Defendants and Plaintiff Lew Warden appeared in pro. per.

After full consideration of the evidence, and the separate statements submitted by counsel, as well as oral argument by counsel, the Court finds there is no triable issue of material fact as to the following claims asserted in the pleadings of plaintiff and that summary adjudication should be granted for the following reasons:

(1) There is no evidence that Plaintiff was denied procedural due process;

(2) There is no evidence that Plaintiff was denied equal protection;

(3) There is no evidence that Defendants breached an express or implied contract;

(4) There is no evidence that a cause of action for tortious breach of implied covenant of good faith and fair dealing;

(5) There is no evidence that Plaintiff's federal civil rights were breached and the evidence shows that Defendants are not "persons" within the meaning of 42 U.S.C. Section 1983;

(6) There is no evidence that Plaintiff is entitled to punitive damages; and

(7) Defendant's licensing activity immunity under government code sections 818.4 And 821.2 and common law quasi-judicial and legislative immunity from liability for damages is a defense to Plaintiff's tort claim for damages.

IT IS THEREFORE ORDERED that said motion for summary adjudication of issues is Granted and that the final judgment in this action shall, in addition to any other matters determined at trial, award judgment in accordance with the matters so adjudicated.

/s/ James R. Lambden
Judge of the Superior Court

APPENDIX E

CALIFORNIA
BUSINESS AND PROFESSIONS CODE

MANDATORY CONTINUING LEGAL EDUCATION
[Added Stats 1989 ch 1425 sec 2.]

Section 6070. Establishment of program
(a) The State Bar shall request the California Supreme Court to adopt a rule of court authorizing the State Bar to establish and administer a mandatory continuing legal education program. The rule that the State Bar requests the Supreme Court to adopt shall require that, within designated 36-month periods, all active members of the State Bar shall complete at least 36 hours of legal education activities approved by the State Bar or offered by a State Bar approved provider, with eight of those hours in legal ethics or law practice management, four hours of which shall be legal ethics. If the California Supreme Court adopts a rule authorizing the State Bar to administer the program, the State Bar shall establish and administer a mandatory continuing legal education program commencing on or after January 1, 1991. A member of the State Bar who fails to satisfy the mandatory continuing legal education requirements of the program authorized by the Supreme Court rule shall be enrolled as an inactive member pursuant to rules adopted by the Board of Governors of the State Bar.

(b) For purposes of this section, statewide associations of public agencies and incorporated, non-profit professional associations of attorneys, shall be certified as State Bar providers by an appropriate application process to be est-

ablished by the State Bar. The certification may be revoked only by majority vote of the board, after notice and hearing, and for good cause shown. Programs provided by the California District Attorneys Association or the California Public Defenders Association, or both, including but not limited to programs provided pursuant to Title 1.5 (commencing with Section 11500) of Part 4 of the Penal Code, are deemed to be legal education activities approved by the State Bar or offered by a State Bar approved provider.

(c) Notwithstanding the provisions of subdivision (a), retired judges, officers and elected officials of the State of California, and full- time professors at law schools accredited by the State Bar of California, the American Bar Association, or both, shall be exempt from the provisions of this section. Full-time employees of the State of California, acting within the scope of their employment, shall be exempt from the provisions of this section. Nothing in this section shall prohibit the State of California, or any political subdivision thereof, from establishing or maintaining its own continuing education requirements for its employees.

* * *

UNLAWFUL PRACTICE

Section 6125. Practice without active membership

No person shall practice law in this State unless he is an active member of the State Bar.

* * *

APPENDIX F

CALIFORNIA RULES OF COURT

Rule 958.
(a) [Statutory authorization] This rule is adopted under section 6070 of the Business and Professions Code.

(b) The State Bar shall establish and administer a minimum continuing legal education program, beginning on or after January 1, 1991, under rules adopted by the Board of Governors of the State Bar. These rules may provide for carry forward of excess credit hours, staggering of the educational requirement for implementation purposes, and retroactive credit for legal education approved by the State Bar or offered by a State Bar approved provider completed prior to the effective date of the program.

(c) Each active member of the State Bar (1) not exempt under Business and Professions Code section 6070, (2) not a full-time employee of the United States Government, its departments, agencies, and public corporations, acting within the scope of his or her employment, and (3) not otherwise exempt under rules adopted by the Board of Governors of the State Bar, shall, within 36-month periods designated by the State Bar, complete at least 36 hours of legal education approved by the State Bar or offered by a State Bar-approved provider. Eight of those hours shall address legal ethics or law practice management, four hours of which shall be in legal ethics. Members may be required to complete legal education in other specified areas within the 36-hour requirement under rules adopted by the State Bar. Each active member

shall report his or her compliance to the State Bar under rules adopted by the Board of Governors of the State Bar.

(d) A member of the State Bar who fails to satisfy the requirements of the State Bar's minimum continuing legal education program shall be enrolled as an inactive member of of the State Bar under rules adopted by the Board of Governors of the State Bar.

(e) The State Bar shall have the authority to set and collect appropriate fees and penalties.
[Adopted by the Supreme Court Dec. 6, 1990.]

* * *

APPENDIX G

CALIFORNIA STATE BAR RULES
MCLE RULES AND REGULATIONS

[Adopted December 8, 1989; Amended July 13, 1991, July 11, 1992.]

Rule 1.0. Purpose

Continuing legal education is required of all active members of the State Bar of California not specifically exempted from this requirement to assure that, throughout their careers, California attorneys remain current regarding the law, the obligations and standards of the profession, and the management of their practices.

Rule 2.0. Minimum Continuing Legal Education Requirement

2.1. Requirement. Except as otherwise provided, all active members of the State Bar of California shall complete at least 36 hours of approved continuing legal education activities every 36 months. Of the 36 hours:

2.1.1. At least eight shall be in the area of legal ethics and/or law practice management, with at least four of the eight hours in legal ethics;

2.1.2. At least one shall relate to prevention, detection, and treatment of substance abuse and emotional distress; and

2.1.3. At least one shall relate to elimination of bias in the legal profession based on any of, but not limited to the following characteristics: sex, color, race, religion, ancestry, national origin, blindness or other physical disability, age, and sexual orientation. Instruction in legal ethics, prevention, detection, and treatment of substance abuse and emotional distress, and elimination of bias may be a portion of a substantive law education activity.

2.2. Amount of Self-study. Up to but not more than 18 hours credit may be given for self-study activities during any compliance period.

Rule 3.0. Compliance Period

3.1. Initial Compliance Period. The initial compliance period shall begin on February 1, 1992. Except for the initial compliance period for Compliance Groups 2 and 3, members referred to in section 6.1, and members admitted or readmitted after February 1, 1992, all compliance periods shall be 36 months in length and shall begin the day after the end of the previous compliance period.

3.2. Compliance Group 1. Members whose last names begin with A--G on February 1, 1992 shall be permanently assigned to Compliance Group 1. The initial compliance period for Compliance Group 1 shall end on January 31, 1995.

3.3. Compliance Group 2. Members whose last names begin with H--M on February 1, 1992 shall be permanently assigned to Compliance Group 2. The initial compliance period for Compliance Group 2 shall end on January 31, 1994. During the initial compliance period, members assigned to Compliance Group 2 shall be required to complete at least 24 hours of approved continuing legal education activities. Of the 24 hours:

3.3.1. At least five shall be in the areas of legal ethics and/or law practice management, with at least three of the five hours in legal ethics; and

3.3.2. No more than 12 hours credit may be given for self-study activities. During the initial compliance period only, such members shall not be required to complete one hour of approved continuing legal education relating to prevention, detection,

and treatment of substance abuse and emotional distress or elimination of bias in the legal profession.

3.4. Compliance Group 3. Members whose last names begin with N--Z on February 1, 1992 shall be permanently assigned to Compliance Group 3. The initial compliance period for Compliance Group 3 shall end on January 31, 1993. During the initial compliance period, members assigned to Compliance Group 3 shall be required to complete at least 12 hours of approved legal education activities. Of the 12 hours:

3.4.1. At least three shall be in the areas of legal ethics and/or law practice management, with at least one and one-half of the three hours in legal ethics; and

3.4.2. No more than six hours credit may be given for self-study activities.

During the initial compliance period only, such members shall not be required to complete one hour of approved continuing legal education relating to prevention, detection, and treatment of substance abuse and emotional distress or elimination of bias in the legal profession.

3.5. Compliance Period for Members Admitted or Readmitted after February 1, 1992. [Omitted as not pertinent to this appeal.]

Rule 4.0. Categories of Credit [Omitted as not pertinent to this appeal.]

Rule 5.0. Computation of Credit Hours [Omitted as not pertinent to this appeal.]

Rule 6.0. Special Cases and Exemptions

6.1. Prescribed Exemptions. In accordance with Business & Professions Code section 6070 and California Rule of Court 958, the

following are exempt from the continuing legal education requirement:
6.1.1. Retired judges;
6.1.2. Officers and elected officials of the State of California;
6.1.3. Full-time professors at law schools accredited by the State Bar, the ABA, or both; 6.1.4. Full-time employees of the State of California acting within the scope of their employment. For the purposes of this section, "full-time employees of the State of California acting within the scope of their employment" shall refer to members employed by the State of California as attorneys or Administrative Law Judges on permanent or probationary basis, regardless of their working hours, who do not practice law in California except as employees of the State of California; and
6.1.5. Full-time employees of the United States Government, its departments, agencies, and public corporations, acting within the scope of their employment. For the purposes of this section, "full-time employees of the United States Government, acting within the scope of their employment" shall refer to members employed by the United States Government, its departments, agencies and public corporations, as attorneys or Administrative Law Judges on a permanent or probationary basis, regardless of their working hours, who do not practice law except as employees of the United States Government, its departments, agencies, and public corporations. [Remainder of paragraph omitted as not pertinent to this appeal.]

6.2. Good Cause Exemption From or Modification of Requirement. A member may file a written request setting forth good cause for an exemption from compliance with or modification of any of the requirements, including an extension of time for compliance, in accordance

with a procedure to be established by the Committee on Mininum Continuing Legal Education. 6.2.1. Should the decision be adverse to the member, the member may appeal such decision pursuant to the provisions of California Rule of Court 952(c).

6.3. Attestation of Exemption From or Modification of The Requirement. Members claiming exemption from or modification of the minimum continuing legal education requirement shall attest to or furnish such substantiation of their exempt status or modification of the requirement as the State Bar may require.

Rule 7.0. Standards of Approval of Education Activities. [Omitted as not pertinent to this appeal.]

Rule 8.0. Approval of Individual Education Activities. [Omitted as not pertinent to this appeal.]

Rule 9.0. Approval of Providers. [Omitted as not pertinent to this appeal.]

9.1 Statewide Associations of Public Agencies and Incorporated Non-Profit Associations of Attorneys.

Statewide associations of public agencies and incorporated, non-profit professional associations of attorneys shall be certified as State Bar approved providers upon completion of the application process.

9.2 Requirements for Approval of Providers. [Omitted as not pertinent to this appeal.]

9.3. Revocation of Provider Approval. The approval of any provider referred to in section 9.1 may be revoked only by a majority of the Board of Governors, after notice

and hearing, and for good cause. The approval of all other approved providers

9.4. Approval of Subdivisions of Approved Providers. [Omitted as not pertinent to this appeal.]

Rule 10.0. Member Request for Education Activity Approval [Omitted as not pertinent to this appeal.]

Rule 11.0. Activity and Provider Approval Fee [Omitted as not pertinent to this appeal.]

Rule 12.0. General Compliance Procedures [Omitted as not pertinent to this appeal.]

Rule 13.0. Non-Compliance Procedures
13.1 What Constitutes Non-Compliance
Non-Compliance shall include any of the following:
13.1.1. Failure to complete the educational requirements within the compliance period or any granted extension thereof;
13.1.2. Failure to provide attestation of compliance (including attestation of exempt status);
13.1.3. Failure to provide satisfactory evidence of compliance (including evidence of exempt status) within the prescribed time after a request by the State Bar;
13.1.4. Failure to satisfy the education requirement and furnish evidence of such compliance within 60 days after receipt of a Non-Compliance Notice; or
13.1.5. Failure to pay a non-compliance fee within the time prescribed after a request by the State Bar.

13.2. Non-Compliance Notice and 60 Day Period to Attain Compliance. Members failing to comply will receive a Non-Compliance Notice stating the specific discrepancy and will be given

60 days from the date of notification to file a response clarifying the discrepancy or otherwise showing compliance with the requirements. Such notice shall contain the following language near the beginning of the notice, in capital letters:

IF YOU FAIL TO PROVIDE ADEQUATE PROOF OF COMPLIANCE WITH THE MINIMUM CONTINUING EDUCATION REQUIREMENT BY (INSERT DATE 60 DAYS FROM DATE NOTICE IS SENT), YOU SHALL BE ENROLLED AS AN INACTIVE MEMBER OF THE STATE BAR AND WILL NOT BE PERMITTED TO PRACTICE LAW UNTIL SUCH TIME AS ADEQUATE PROOF OF COMPLIANCE IS RECEIVED BY THE STATE BAR.

Members given 60 days to respond to a Non-Compliance Notice may use this 60 day period to attain the adequate number of credit hours for compliance. Credit hours earned during this period may be counted toward compliance with the prior compliance period's requirement unless hours in excess of the requirement are earned, in which case the excess hours may be counted toward meeting the current compliance period's requirement.

13.3. **Non-Compliance Fee.** A member who, for whatever reason, is in non-compliance at the end of the compliance period shall pay a non-compliance fee upon request. Failure to pay the non-compliance fee within the prescribed time after a request by the State Bar shall constitute non-compliance with the requirements.

Rule 14.0. Consequences of Non-Compliance

14.1. Enrollment as Inactive Member. A member failing to comply with the requirements after the 60 day period for compliance has expired shall be enrolled as an inactive member by the Board of Governors or an officer of the State Bar or his or her designee.

14.2. Enrollment as Inactive Member Administrative Process The enrollment pursuant to

these rules and regulations is administrative in nature and no hearing is required.

14.3. Accrual of Membership Fee Membership fees shall continue to accrue at the active rate against a member during the period he or she is enrolled as an inactive member pursuant to section 14.1.

Rule 15.0. Reinstatement [Omitted as not pertinent to this appeal.]

Rule 16.0. Committee on Minimum Continuing Legal Education [Omitted as not pertinent to this appeal.]

Rule 17.0. Confidentiality A member's status relating to the minimum continuing legal education requirements, as it relates to the compliance, non-compliance, or exempt status of the member, is not confidential and shall be disclosed upon request of any interested person. Other information provided to the State Bar or its representatives pursuant to these regulations shall be available for public inspection during business hours, except to the extent that disclosure is prohibited by law. Requests for lists of members shall be subject to the State Bar's Membership Lists Policy.

* * *

APPENDIX H

PLAINTIFF'S COMPLAINT

FILED
ALAMEDA COUNTY
May 02 1994
Ronald G. Overholt
Exec.Off.Clerk
By Alphomine Oates

LEW WARDEN
114 Parrott Street
San Leandro, California
(510) 483-3900

Plaintiff in Pro. Per.

IN THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

LEW WARDEN, Plaintiff, vs THE STATE BAR OF CALIFORNIA, KAHALA MOTOYAMA, LORNA MAYNARD, CAROLE ROSSI, and Does ONE through ONE HUNDRED, Defendants.	No. 734372-4 COMPLAINT FOR DAMAGES, DECLARATORY RELIEF, INJUNCTION, MANDATE SUMMONS ISSUED

Plaintiff complains of the defendants, and each of them, and for causes of action alleges as follows:

I

The true names and capacities of the defendants Does One through One Hundred,

whether individual, corporate, associate, or otherwise, are unknown to plaintiff other than that they are individuals associated with the State Bar of California as officers, agents, servants, employees, and other capacities presently unknown to plaintiff, who, for the purposes of personal gain and professional aggrandizement at the expense of plaintiff and all other members of the State Bar of California similarly situated as plaintiff, planned, promulgated, organized, administered, and enforced a certain regulation of the State Bar of California known as the Minimum Continuing Legal Education of the Bar program.

II

At all times herein mentioned, and but for the acts of the defendants referred to herein, plaintiff's profession and principal means of livelihood is and has been that of an attorney. Plaintiff was and, but for the actions of the defendants, and each of them, referred to herein, has been a member of the State Bar of California, since 1953, admitted to the practice of the law before all California courts, the United States District Courts for the several districts of California, the Tax Court of the United States, the United States Court of Appeals for the Ninth Circuit, and the United States Supreme Court. Plaintiff, at all times herein mentioned, and except for the acts of the defendants referred to herein, has continuously been in good standing, without censure, public or private, and of good repute as a dedicated, capable, and ethical attorney. But for the conduct of the defendants, and each of them, referred to herein, plaintiff still would be licensed to practice his said profession before all such courts.

III

On or about July 19, 1993, the defendants, and each of them, wrongfully, without

first affording plaintiff due notice and opportunity to be heard in the manner provided by law, and contrary to the Constitutions of the United States and the State of California, caused the suspension of plaintiff's license to practice law solely on the ground that plaintiff had failed to comply with the said Minimum Continuation Legal Education of the Bar program.

IV

Thereafter, said defendants, and each of them, caused notice of such suspension to be sent to the United States District Court of the Northern District of California, and thereby caused the Chief Judge of said Court to order that plaintiff be barred from the practice of the law before said United States District Court.

V

Plaintiff is informed and so believes and therefore alleges that said defendants, and each of them, in so sending notice to the United States District Court, did so for the purpose of hurting and harming plaintiff and causing him to be barred from the practice of law before said United States District Court rather than take action directly against plaintiff in such manner as would have required the defendant State Bar of California and such other defendants so acting to have afforded plaintiff opportunity to be heard by and before the courts of the State of California, which such latter action would have caused the Supreme Court of the State of California and its agencies to review and consider the constitutionality of the said Minimum Continuing Legal Education of the Bar program.

VI

Thereafter, said defendants, and each of them, according to plaintiff's information and belief, caused delivery to the California Lawyer, the monthly magazine ostensibly devoted to discussing matters of common interest

to members of the State Bar, to be suspended, which act, plaintiff verily believes, was done by said defendants to prevent plaintiff and other members of the State Bar similarly situated and disposed from learning of each other's complaints concerning said Minimum Continuing Legal Education of the Bar program and thereby joining forces to bring about the demise of said program.

VII

Said Minimum Continuing Legal Education of the Bar program, both in the form in which it was caused to be created, and in the manner in which it has been applied to plaintiff as alleged herein, violates the Equal Protection and Due Process clauses of the United States and the State of California in that, among other things, it discriminates against plaintiff because of his age, his birthday being February 17, 1920, his name, which commences with the letter "W", and the manner in which he practices his profession, that is, as a sole private practitioner, not a member of a large law firm, or an employee of a governmental agency practicing law in the State of California, or a member of the State Legislature, or a retired judge, or any other capacity exempted from the provisions of said program, because it is not reasonably or rationally related to a legitimate governmental interest, in that it does not reasonably and uniformly promote or insure the competency of all members of the State Bar engaged in the practice of the law in the State of California, in that it makes no provision for hearing before a State Bar member's license to practice law can be suspended, and in that the defendants herein, acting under the ostensible authority of said program, arbitrarily suspended plaintiff's license to practice law without first affording him a hearing before an impartial judge knowing that

plaintiff desired to make such constitutional objections to said program and its administration.

VIII

Said Minimum Continuing Legal Education of the Bar program denies plaintiff the equal protection of the laws in that plaintiff, at the time said defendants suspended plaintiff's license to practice law, was 73 years of age. Because said program purports to divide State Bar members into "compliance" groups (Rule 3.0) and calls for different dates of compliance by the several compliance groups based upon alphabetical divisions, with members whose last names begin with the letters N to Z being required to comply with the program's criteria by January 31, 1993, as distinguished from members whose names begin with the letters H to M being required to comply by January 31, 1994, and members whose names begin with the letters A to G being required to comply by January 31, 1995, plaintiff is and was disfavored in the order of 2 years of opportunity to practice his profession over members who have their names begin with the letters A to G. At any stage of a member's life, such a discrimination would be significant; at plaintiff's age, it was catastrophic and particularly damaging to plaintiff.

IX

Said Minimum Continuing Legal Education of the Bar program further denies plaintiff the equal protection of the laws in that plaintiff, at the time said defendants suspended his said license to practice law, was engaged in general practice of the law as a solo practitioner, and thus, by the program's arbitrary and discriminatory classifications, is subject to the program. However, the program specifically exempts members who are retired judges (Rule 6.1.1.), officers and elected officials of the State of California (6.1.2.), full time professors at law schools accredited

by the State Bar or the ABA (6.1.3.), and employees of the State of California (6.1.3.) and the United States government. Further, in practice, the defendant State Bar allows large law firms to conduct their own "in house" educational programs while requiring less favored members to attend expensive, time-consuming, and wasteful lectures of dubious educational content which require nothing more of the attendee than that he pay his money and sign in to verify his attendance, leaving him to listen, sleep, or depart as his conscience might direct.

X

Plaintiff is informed and so believes and therefore alleges that there is no reasonable or rational basis for excluding from the requirements of said program, and thus discriminating against plaintiff and other disfavored members of the State Bar similarly situated, such favored members of the State Bar who practice law in the State of California, often in competition with and as adversaries of less favored members, and who, in fact, in plaintiff's experience, are at least as much in need of continuing professional education as less favored members, and who serve the public in such manners as to cause their presumptive want of professional skill and and knowledge to have a much greater adverse impact upon the citizens of the State of California than such presumptive want of professional skill and knowledge on the part of less favored members.

XI

Plaintiff is informed and so believes and therefore alleges that defendants, and each of them, in promoting and promulgating said program, intentionally provided for the exclusions referred to herein above in order to not antagonize politically power-

ful and organized groups of members of the State Bar who would have opposed said program had they been subject to its terms, and thus assure its creation, together with their own personal and professional gain and aggrandizement, at the expense of the other members of the State Bar who have no organization to represent them other than the defendant State Bar itself.

XII

Said Minimum Continuing Legal Education of the Bar program violates the Equal Protection and Due Process clauses of the United States and the State of California constitutions in that it in fact has no reasonable relation to any legitimate governmental purpose in that it does not in fact provide for and/or insure minimum educational standards uniformly applied to all members of the State Bar, and in that said program discriminates between those members who are in need of further education and those who are not, there being no provision for examination to determine professional competence, either prior to compulsory participation in the program or after ostensible compliance.

XIII

Plaintiff is informed and so believes and therefore alleges that had the defendants, and each of them, been truly interested in assuring the continuing competency of members of the State Bar serving the public, rather than in advancing their personal and professional fortunes by the practice commonly referred to as "empire building," which is what has occurred with said Minimum Continuing Legal Education of the Bar program, said defendants would have, for example, utilized the medium of the California Lawyer, formerly known as the State Bar Journal before it was junked by said defendants, to keep members of the State Bar continually educated, and not necessarily mini-

mally, by means of learned articles discussing both new and established principles of law, whether promulgated by statute or appellate court decisions, which used to be the practice of the State Bar Journal, rather than the present practice of the California Lawyer gossiping about the comings, goings, and doings of mega-law firms and advancing the personal and political agendas of those members who control the State Bar and said publication, and further, could have assured the public that the members of the State Bar were indeed currently competent by simple tests, such as are given by the Department of Motor Vehicles to assure the knowledge of California motorists of the principles of law applicable to the safe operation of a motor vehicle, which tests, again, could be given and administered via the medium of the California Lawyer, all at continuing minimum expense and burden to the members of the State Bar, with written test scores to assure the general public that its interests were truly being served. But such a rational program would not be acceptable to defendants who would then have no empire to lord over and thereby justify their existence and burden on the members of the State Bar.

XIV

By reason of the premises, plaintiff has been denied substantive due process of law in that, among other things, the said Minimum Continuing Legal Education of the Bar program, for the reasons stated herein above, is arbitrary, unreasonable, and has no substantial relation to the public health, safety, morals, or general welfare.

XV

By reason of the premises, plaintiff has been denied procedural due process of law in that his license to practice his profession and thereby earn his livelihood has been suspended without first afford-

ing him a hearing.

XVI

That upon plaintiff's admission to the practice of law in the State of California, a written and unwritten contractual relationship was established and thereafter at all times herein mentioned continued between plaintiff and said defendants, and each of them, which included the implied covenant that said defendants, at all times, would act fairly toward and in good faith with plaintiff and other members similarly situated.

XVII

By reason of the premises, the defendants, and each of them, have, both contractually and tortiously, breached said implied covenant of good faith and fair dealing.

XVIII

In doing the wrongful acts referred to herein, defendants, and each of them, acted and conspired to act under color of state law to deprive plaintiff and other members of the State Bar of his and their civil rights guaranteed by the Constitutions of the United States and the State of California, and damages ought to be assessed against each said defendant as provided by law for the redress of said wrongs and vindication of said rights.

XIX

By reason of the premises, plaintiff has suffered special damages for loss of income from the practice of the law in such sums as shall be established at the time of trial.

XX

By reason of the premises, plaintiff has suffered severe emotional distress and has been damaged in such sums as shall be established at the time of trial.

XXI

By reason of the premises, plaintiff has suffered general damages in such sums as shall be established at the time of trial.

XXII

In doing the wrongful acts referred to herein, the defendants, and each of them, acted with a calloused disregard for the rights and sensibilities of plaintiff and other members similarly situated, and punitive damages ought to be assessed against each said defendant found to be so acting in the sums of not less than $100,000 per defendant to punish each said defendant, and to provide an example and deter and discourage similar wrongful conduct by said defendant and others similarly situated and so disposed.

XXIII

On or about October 1, 1993, plaintiff caused a claim of damage to be served upon the defendant State Bar of California, which claim of damage was denied on or about November 5, 1993.

WHEREFORE, plaintiff prays for judgment as follows:

1. For a judgment declaring said Minimum Continuing Legal Education of the Bar program to be unconstitutional, void, and of no force or effect;

2. For an order directing the State Bar of California to rescind its order suspending plaintiff's license to practice law and enjoining defendants, and each of them, from further interfering with plaintiff's right to practice law;

3. For an order directing the State Bar of California to restore the licenses of every other member of the State Bar whose license to practice law was suspended by reason of said member's failure to comply with said Minimum Continuing Legal Education of the Bar program, and to give each said member written notice of said action;

4. For an order directing the State Bar of California to inform, in writing, each

court or tribunal which the State Bar had informed of its suspension of plaintiff's, and every other member's, license to practice law, of this judgment;

5. For special damages according to proof at the time of trial;

6. For general damages according to proof at the time of trial;

7. For punitive damages according to proof at the time of trial;

8. For attorney's fees according to proof at the time of trial;

9. For costs of suit; and

10. For such other and further relief as to the court may seem just and proper.

Dated: April 27, 1994.

_____

Lew Warden, Plaintiff.

APPENDIX I

PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

FILED
ALAMEDA COUNTY
Aug 28 1995
Ronald Overholt, Exec Off/Clerk
By Ed Cranston

(Caption omitted.)

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A. DEFENDANTS HAVE FAILED TO SUSTAIN THEIR BURDEN OF PROVING THAT NO TRIABLE ISSUES OF MATERIAL FACT EXIST AND THAT THEY ARE ENTITLED TO JUDGMENT AS A MATTER OF LAW.

B. MULTIPLE TRIABLE ISSUES EXIST THAT (1) THE STATE BAR'S SUSPENSION OF PLAINTIFF AND OTHERS SIMILARLY SITUATED FROM THE PRACTICE OF LAW WITHOUT A HEARING DENIED PLAINTIFF DUE PROCESS OF LAW, (2) THE MANY EXEMPTIONS FROM THE MCLE PROGRAM VIOLATE EQUAL PROTECTION, (3) THE NAME AND AGE DISCRIMINATIONS OF THE COMPLIANCE PERIODS VIOLATE EQUAL PROTECTION, (4) DEFENDANTS CONSPIRED TO CAUSE PLAINTIFF'S SUSPENSION SO AS TO COMPEL HIM TO ABANDON HIS CONTENTIONS OF UNCONSTITUTIONALITY, (5) DEFENDANTS BREACHED THEIR DUTY TO ACT FAIRLY AND IN GOOD FAITH TOWARD PLAINTIFF, (6) DEFENDANTS ACTED UNDER COLOR OF STATE LAW AND ARE LIABLE UNDER THE FEDERAL CIVIL RIGHTS ACTS, (7) INJUNCTIVE RELIEF AND (8) PUNITIVE DAMAGES ARE PROPER.

1. Plaintiff's right to pursue his profession was taken without first affording him due process of law.

2. The many exemptions from the MCLE program denied plaintiff the equal protection of the laws.

3. The name classification of the MCLE program's compliance periods denied plaintiff the equal protection of the laws, and, because of his age, was particularly damaging to him.

4. Defendants are liable to plaintiff for a fraudulent conspiracy to cause or allow his suspension from the practice of law.

5. Defendants breached their duty to act toward plaintiff fairly and in good faith.

6. Plaintiff had established sufficient facts for a cause of action under the federal Civil Rights Acts.

7. Injunctive or mandatory prohibition relief is appropriate.

8. Punitive damages are appropriate.

* * *

APPENDIX J

PLAINTIFF'S EVIDENCE IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

FILED
ALAMEDA COUNTY
AUG 28 1995

(Caption omitted.)

EXHIBIT A
PLAINTIFF'S DECLARATION AND REQUEST FOR JUDICIAL NOTICE OF FACTS IN OPPOSITION TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT AND SUMMARY ADJUDICATION OF ISSUES

LEW WARDEN, under penalty of perjury, declares as follows:

I am the plaintiff in the within action. and, if called as a witness, I can and will testify competently as to the following matters of fact which are true of my own knowledge, and which, where so identified below, may also be judicially noticed by the court.

Plaintiff requests that the court judicially notice each matter of fact identified below as a proper matter for judicial notice by the term "Judicial Notice".

Fact No. 1: From the time of my admission to the State Bar by the California Supreme Court in 1953, and at all times since until the action taken by the defendant State Bar in July 1993 in summarily suspending my right to practice law--an act which is euphemistically referred to by defendant State Bar as "enrolled as an inactive member"--for failure to comply with the educational requirements

of the Minimum Continuing Legal Education of the Bar, herein after referred to as the "MCLE program", I have been duly admitted to appear before and be heard by all the courts of the State of California by the Supreme Court of the State of California, in good standing with each of said courts, and duly authorized to practice law in the State of California.

Fact No. 2: Until the action taken by the defendant State Bar in summarily suspending my right to practice law, I was duly admitted to practice before, and in good standing with, the United States District Courts for the Northern, Central, and Southern Districts of California, the Tax Court of the United States, the United States Court of Appeals for the Ninth Circuit, and the United States Supreme Court.

Fact No. 3: At all times since I was first admitted to the practice of law in California, until the action taken by the State Bar in suspending my right to practice law, I have been in good standing with the State Bar, without any censure, public or private for any unlawful or unethical conduct.

Fact No. 4: At the time the defendant State Bar summarily suspended my right to practice law, my sole means of earning the livelihoods of myself and my wife was the practice of law.

Fact No. 5: (Judicial Notice.) The practice of law includes such activities as appearing before and being heard by a court of law, giving legal advice, and preparing legal documents. (Admitted by State Bar's response to plaintiff's Request for Admission no. 5.)

Fact No. 6: (Judicial Notice.) Only active

members of the State Bar of California may lawfully practice law in California. (Admitted by State Bar's response to plaintiff's Request for Admission no. 6.)

Fact No. 7: (Judicial Notice.) Only active members of the State Bar can receive monetary compensation for practicing law in California. (Admitted by State Bar's response to plaintiff's Request for Admission no. 7.)

Fact No. 8: (Judicial Notice.) Inactive members of the State Bar may not lawfully practice law in California. (Admitted by State Bar's response to plaintiff's Request for Admission no. 8.)

Fact No. 9: (Judicial Notice.) Criminal penalties may be imposed on an individual unlawfully practicing law in California. (Admitted by State Bar's response to plaintiff's Request for Admission no. 6.)

Fact No. 10: (Judicial Notice.) Rule 13 of the MCLE rules, in pertinent part, provides as follows:

13.1 What Constitutes Non-Compliance
Non-Compliance shall include any of the following:
13.1.1 Failure to complete the educational requirements within the compliance period or any granted extension thereof;
13.1.2 Failure to provide satisfactory attestation of compliance (including evidence of exempt status);
13.1.3 Failure to provide satisfactory evidence of compliance (including evidence of exempt status) within the prescribed time after a request by the State Bar;
13.1.4 Failure to satisfy the education requirement and furnish evidence of such compliance within 60 days after receipt of

a Non-Compliance Notice; or
13.1.5 Failure to pay a non-compliance fee within the time prescribed after a request by the State Bar.
Fact No. 11: MCLE Rule 14.1 defines "enrollment as an inactive member" as meaning that a member so enrolled "will not be permitted to practice law until such time as adequate proof of compliance" with Rule 13.1 of the MCLE Rules has been received by administrators of the MCLE program.

Fact No. 12: (Judicial Notice.) MCLE Rule 14.0 and its subparts provide as follows:
14.0 CONSEQUENCES OF NON-COMPLIANCE
14.1 Enrollment as Inactive Member
A member failing to comply with the requirements after the 60 day period for compliance has expired shall be enrolled as an inactive member by the Board of Governors or an officer of the State Bar or his or her designee.
14.2 Enrollment as Inactive Member Administrative Process
The enrollment pursuant to these rules and regulations is administrative in nature and no hearing is required.
14.3 Accrual of Membership Fee
Membership fees shall continue to accrue at the active rate against a member during the period he or she is enrolled as an inactive member pursuant to section 14.1.

Fact No. 13: (Judicial Notice.) To enroll an active member of the State Bar as an inactive member pursuant to Rule 14 of the MCLE Rules is the same, in substance and effect, as to suspend such member's right to practice law.

Fact No. 14. (Judicial Notice.) The enrollment of a member of the State Bar as an inactive member pursuant to the MCLE rules has the same effect as disbarment, except that a

disbarred attorney is no longer liable for State Bar dues, that prior to his disbarment he is afforded full and fair notice of the charges against him and opportunity to be heard why action should not be taken against him, and that he is not disbarred until the the Supreme Court of the State of California has reviewed the matter and so ordered.

Fact No. 15. On July 9, 1993, after receiving notice from the State Bar dated June 29, 1993 (Plf. Depo, Bar Ex. 1(a), sub. #5) that I was not in compliance with the MCLE Rules and Regulations, that I would be suspended from the practice of law effective July 19, 1993, should I fail to prove compliance, and that if I had any questions I should call the MCLE Compliance Coordinator, Kahala Motoyama, and having called Ms. Motoyama several times without making contact, I wrote the State Bar, attention Ms. Motoyama, protesting that such suspension without a hearing was unconstitutional and questioning the constitutionality of the MCLE program. (Plfs Depo., Bar Ex. 1(a), sub #6.)

Fact No. 16: By letter dated July 23, 1993 (Plfs Depo., Bar Ex. 1(a), sub #8), copy to defendant Carole Rossi, defendant Lorna Maynard, Senior Administrative Assistant of the State Bar, wrote to me advising that my letter of July 9, 1993, had been referred to the State Bar's General Counsel to respond to my questions concerning the constitutionality of the MCLE program.

Fact No. 17: The Maynard letter of July 23, 1993, was the first and only direct reply, whether written or oral, I received to my letter of July 9, 1993, until after I was summarily suspended from the practice of law. (Plfs Depo., Bar Ex. 1(a), sub #7), had written to the State Bar, attention Lorna May-

nard on September 23, 1993 (Plfs Depo., Bar Ex. 1(a), sub #9), and had served my Claim of Damage dated October 7, 1993, on the State Bar, when I received a letter from defendant Carole Rossi dated October 22, 1993. (Plfs Depo., Bar Ex. 1(a), sub #10.)

Fact No. 18: At no time has the State Bar or any of its attorneys, officers, or administrators, whether orally, in writing, or in the course of the within action, made any statement to me, in substance or effect, that the MCLE program was constitutional or deny the truth of my several statements, supported by citations of authority, that the MCLE program and the action taken against me were unconstitutional.

Fact No. 19: On or about July 19, 1993, administrators of the MCLE program, without first affording me a hearing or opportunity to be heard, and against my will, "enrolled" me as an "inactive member" of the State Bar, and notified me of such suspension from the practice of law by form letter dated July 30, 1993. (Plfs Depo, Bar Ex. 1(a), sub #7.)

Fact No. 20. It is inferable, declarant infers, and the court should infer, from the facts and circumstances referred to in Nos. 15, 16, and 19, that administrators of the MCLE program caused me to be suspended from the practice of law while contemporaneously advising me that legal counsel for the State Bar would review my contentions concerning the unconstitutionality of the MCLE program and reply to me before such suspension was ordered.

Fact No. 21. It is inferable, declarant infers, and the court should infer, from the facts and circumstances referred to in Nos. 15, 16, 17, 18, and 19, that the State Bar,

at least prior to October 22, 1993, had not undertaken or reviewed any studies or legal analyses concerning the constitutionality of the MCLE program, else it would have been a simple matter for the State Bar to have responded to enquiries and contentions concerning the unconstitutionality of the MCLE program and my suspension from the practice of law by citing or referring me to such studies or legal analyses.

Fact No. 22. It is inferable, declarant infers, and the court should infer, from the facts and circumstances referred to in Nos. 15, 16, 17, 18, and 19, that the defendant State Bar has admitted that the MCLE program and the summary suspension of my right to practice law are unconstitutional.

Fact No. 23: At the same time the defendant State Bar suspended me from the practice of law in July, 1993, it also suspended some 412 other members of the State Bar for alleged failure to comply with the MCLE program. (State Bar answers to plaintiff's Interrogatories Nos. 3, 11, and 12.)

Fact No. 24: After enrolling me and approximately 412 other members of the State Bar whose rights to practice law had been summarily suspended during the month of July, 1993, the defendant State Bar caused notices of such suspensions to be sent to some 588 courts, agencies, and Bar Associations in California and other States. (State Bar answers to plaintiff's Interrogatories Nos. 3, 11, and 12.)

Fact No. 25: When the defendant State Bar caused the notices referred to in No. 24 above to be sent, it had no reason to believe that the courts, agencies, and bar associations to whom such notices were sent

would search their records to determine if each of the attorneys concerning whom such notices were sent were practicing law before such courts or agencies, or were members of such bar associations, or would consider enforcement action against the attorneys who were the subjects of such notices.

Fact No. 26: The sending of the notices referred to in No. 24 above caused unreasonable burdens and expenses to be imposed upon the courts and agencies, the tax payers supporting them, and the bar associations and their members, to whom such notices were sent, and the members of the State Bar of California whose annual dues were expended to meet the costs of such action.

Fact No. 27: (Judicial Notice.) The Rules and Regulations of the MCLE program do not contain any rule authorizing the State Bar to send the notices referred to in No. 24 above. (Admitted by State Bar's response to plaintiff's Request for Admission no. 41.)

Fact No. 28: When the defendant State Bar caused the sending of the notices to the courts referred to in No. 22 above, I represented clients who had active litigations pending before some of those courts.

Fact No. 29: The State Bar did not cause any inquiry to be made of pending litigations in in which plaintiff, and other members of the State Bar similarly situated, represented clients before causing the notices referred to in No. 22 above to be sent to the courts therein referenced. (Admitted by State Bar's response to plaintiff's Request for Admission no. 44.)

Fact No. 30: The State Bar did not cause any notices to be sent to clients of plaintiff, or to the clients of other members similarly

situated, to the effect that plaintiff, or such other similarly situated members, were not eligible to practice law before the courts in which plaintiff's, and such other similarly situated members', clients had litigations pending, or take any measure to give said clients opportunity to obtain other counsel. (Admitted by State Bar's response to plaintiff's Request for Admission no. 45.)

Fact No. 31: It is inferable, declarant infers, and the court should infer, that the administrators of the MCLE program who acted and omitted to act as referred to in Nos. 15, 16, 17, 18, 19, 21, 23, 24, 25, 26, 29, and 30, and each of them, were more interested in advancing their own employments than in protecting the public from members of the State Bar who were presumed by the MCLE program to be unlearned in the law.

Fact No. 32: It is inferable, declarant infers, and the court should infer, that the actions taken and omitted to be taken by the defendant State Bar referred to in Nos. 15, 16, 17, 18, 19, 21, 23, 24, 25, 26, 29, and 30, and each of them, were punitive in nature.

Fact No. 33: By causing me to be enrolled as an inactive member on July 19, 1993, the officers, agents and employees of the State Bar administering the MCLE program intended to prevent me from practicing my profession, and to compel me to comply with the MCLE program continuing education requirements. (Admitted by State Bar's response to plaintiff's Requests for Admission nos. 13 and 14.)

Fact No. 34: It is inferable, declarant infers, and the court should infer, that the actions taken and omitted to be taken by the defendant State Bar referred to in Nos. 15, 16, 17, 18, 19, 20, 23, 24, 25, 26, 29, and

30, and each of them, were intended to terrorize me, and other members of the State Bar similarly situated, into complying with the MCLE program.

Fact No. 35: It is inferable, declarant infers, and the court should infer, that the actions taken and omitted to be taken by the defendant State Bar referred to in Nos. 15, 16, 17, 18, 19, 21, 23, 24, 25, 26, 29, and 30, and each of them, were taken for the purpose of discouraging me, and other members of the State Bar similarly situated, from attempting to challenge the constitutionality of the MCLE program.

Fact No. 36: It is inferable, declarant infers, and the court should infer, that the actions taken by administrators of the State Bar and the MCLE program referred to in Nos. 15, 16, 17, 18, 19, 21, 23, 24, 25, 26, 29, and 30, and each of them, were taken under color of state law and deprived me of civil rights guaranteed by the Federal Constitution.

Fact No. 37: On October 13, 1993, I caused a duly executed Claim of Damage, dated October 7, 1993, to be filed with the State Bar, which claim was denied by the Board of Governors of the State Bar without affording me a hearing. (Exhibits I, J.)

Fact No. 39: (Judicial Notice.) Business & Professions Code Sec. 6070(a), enacted in 1989, in pertinent part, provides as follows: (Emphasis added to words and phrases which the State Bar failed to heed in suspending plaintiff.)
(a) The State Bar shall request the California Supreme Court to adopt a rule of court author authorizing the State Bar to establish and administer a mandatory continuing legal education program. The rule that the State Bar re-

quests the Supreme Court shall require that **within designated 36-month periods**, all active members of the State Bar shall complete at least **36 hours** of legal education activities approved by the State Bar of (sic) offered by a State Bar approved provider, with eight of those hours in legal ethics or law practice management, four hours of which shall be legal ethics. * * * A member of the State Bar who fails to satisfy the mandatory continuing legal education requirements of the program authorized by the Supreme Court rule shall be enrolled as an inactive member **pursuant to rules** adopted by the Board of Governors of the State Bar.

Fact No. 40: (Judicial Notice.) The MCLE program established and administered by the State Bar does not apply and is not applied to "all active" members of the State Bar. (Admitted by State Bar's response to plaintiff's Request for Admission no. 77.)

Fact No. 41: (Judicial Notice.) Business & Professions Code Sec. 6070(b), enacted in 1989, in pertinent part, provides as follows: [Emphasis added to words and phrases by which the Legislature created classes of members entitled to receive more favorable compliance requirements, or which the State Bar exceeded by extending more favorable compliance requirements to certain members of the State Bar, than were imposed upon plaintiff and others similarly situated.]

(b) For purposes of this section, **statewide associations of public agencies** and **incorporated, non-profit professional associations of attorneys**, shall be certified as approved providers upon completion of an appropriate application process to be established by the State Bar. The certification may be revoked only by a majority vote of the board, **after**

notice and hearing, and for good cause shown. Programs provided by the California District Attorneys Association or the California Public Defenders Association, or both, including but not limited to, programs provided pursuant to Title 1.5 (commencing with Section 11500) of Part 4 of the Penal Code, are deemed to be legal education activities approved by the State Bar or offered by a State Bar approved provider.

Fact No. 42: (Judicial Notice.) Business & Professions Code Sec. 6070(c), enacted in 1989, provides as follows: [Emphasis added to words and phrases by which the Legislature created, or which the State Bar exceeded, in granting complete exemption to classes and individual members of the State Bar from the MCLE program.]

(c) Notwithstanding the provisions of subdivision (a), retired judges, officers and elected officials of the State of California, and full-time professors at law schools accredited by the State Bar of California, the American Bar Association, or both, shall be exempt from the provisions of this section. Full-time employees of the State of California, acting within the scope of their employment, shall be exempt from the provisions of this section. Nothing in this section shall prohibit the State of California, or any political subdivision thereof, from establishing or maintaining its own continuing education requirements for its employees.

Fact No. 43: (Judicial Notice.) Active members of the State Bar who are retired judges of California courts are exempted from the requirements of the MCLE program by reason of Business and Professions Code Sec. 6070, even though they may practice law. (Admitted by State Bar's response to plaintiff's Request

for Admission no. 78.)

Fact No. 44: (Judicial Notice.) Being a retired judge does not, in itself, tend to show the current knowledge of such a member of the State Bar in the special subjects of legal ethics and law practice management, or the general subjects addressed by MCLE approved providers.

Fact No. 45: (Judicial Notice.) There are no rational grounds for concluding a priori that active members of the State Bar who are retired judges, no matter how much legal knowledge such judges may have acquired during their tenure as judges, are more current or knowledgeable in the special subjects of legal ethics and law practice management, or the various general subjects addressed by State Bar approved providers, than any other member of the State Bar.

Fact No. 46: (Judicial Notice.) Active members of the State Bar who are officers of the State of California, are exempted from the requirements of the MCLE program by reason of Business and Professions Code Sec. 6070, even though said members may practice law. (Admitted by State Bar's response to plaintiff's Request for Admission no. 81.)

Fact No. 47: (Judicial Notice.) Being elected to a particular office of the State of California by a member of the State Bar does not, in itself, tend to show the currency or knowledge of such a member in the special subjects of legal ethics and law practice management, or the general subjects addressed by MCLE approved providers.

Fact No. 48: (Judicial Notice.) There are no rational grounds for concluding a priori

that the holding of an office of the State of California by a member of the State Bar, no matter how knowledgeable such member may be the arts of politics or such member's own particular area of governance, makes such a member of the State Bar more current or knowledgeable in the special subjects of legal ethics and law practice management, or the various general subjects addressed by State Bar approved providers, than any other member of the State Bar.

Fact No. 49: (Judicial Notice.) Active members of the State Bar who are full time professors at law schools accredited by the State Bar are exempted from the requirements of the MCLE program by reason of Business and Professions Code Sec. 6070, even though said members may practice law.

Fact No. 50: (Judicial Notice.) Accreditation of a particular law school by the State Bar does not, in itself, establish the currency or knowledge of a particular professor of that law school in the special subjects of legal ethics and law practice management, or the general subjects addressed by MCLE approved providers.

Fact No. 51: (Judicial Notice.) Being a full time professor of a law school accredited by the State Bar does not, in itself, tend to show the current knowledge of such a member of the State Bar in the special subjects of legal ethics and law practice management, or the general subjects addressed by MCLE approved providers.

Fact No. 52: (Judicial Notice.) There are no rational grounds for concluding a priori that active members of the State Bar who are full time professors of law schools accredited by by the State Bar, no matter how knowledgeable

they may be in the subject matter of their teachings, are more current or knowledgeable in the special subjects of legal ethics and law practice management, or the various general subjects addressed by State Bar approved providers, than any other member of the State Bar.

Fact No. 53: (Judicial Notice.) Active members of the State Bar who are full time professors at law schools accredited by the American Bar Association are exempted from the requirements of the MCLE program by reason of Business and Professions Code Sec. 6070, even though said members may practice law.

Fact No. 54: (Judicial Notice.) The American Bar Association is a private association of attorneys over which the California State Bar has no authority or control.

Fact No. 55: (Judicial Notice.) Accreditation of a particular law school by the American Bar Association does not, in itself, tend to show the currency or knowledge of a particular professor of that law school in the special subjects of legal ethics and law practice management, or the general subjects addressed by MCLE approved providers.

Fact No. 56: (Judicial Notice.) Being a full time professor of a law school accredited by the American Bar Association does not, in itself, tend to show the current knowledge of such a member of the State Bar in the special subjects of legal ethics and law practice management, or the general subjects addressed by MCLE approved providers.

Fact No. 57: (Judicial Notice.) There are no rational grounds for concluding a priori that active members of the State Bar who are

full time professors of law schools accredited by the American Bar Association, no matter how knowledgeable they may be in the subject matter of their teachings, are more current or knowledgeable in the special subjects of legal ethics and law practice management, or the various general subjects addressed by State Bar approved providers, than any other member of the State Bar.

Fact No. 58: (Judicial Notice.) Active members of the State Bar who are full-time employees of the State of California are exempted from the requirements of the MCLE program by reason of Business and Professions Code Sec. 6070, even though they may practice law.

Fact No. 59: (Judicial Notice.) Being a full-time employee of the State of California does not, in itself, tend to show the current knowledge of such a member of the State Bar in the special subjects of legal ethics and law practice management, or the general subjects addressed by MCLE approved providers.

Fact No. 60: (Judicial Notice.) There are no rational grounds for concluding a priori that active members of the State Bar who are full-time employees of the State of California, are more current or knowledgeable in the special subjects of legal ethics and law practice management, or the various general subjects addressed by State Bar approved providers, than any other member of the State Bar.

Fact No. 61: (Judicial Notice.) No individual exemptions or classes of exemption from the requirements of the MCLE program other than those set forth in Business and Professions Code Sec. 6070 are authorized by the Legislature of the State of California.

Fact No. 62: (Judicial Notice.) California

Rule of Court 958, adopted by the Supreme Court on December 6, 1990, provides as follows: [Emphasis added to words and phrases by which this Rule granted complete exemption to classes and individual members of the State Bar in excess of the exceptions granted by Bus. & Prof. Code sec. 6070, or which the State Bar exceeded in promulgating the MCLE Rules.]

(a) This rule is adopted under section 6070 of the Business and Professions Code.

(b) The State Bar shall establish and administer a minimum continuing legal education program, beginning on or after January 1, 1991, under rules adopted by the Board of Governors of the State Bar. These rules may provide for carry forward of excess credit hours, **staggering of the educational requirement** for implementation purposes, and retroactive credit for legal education approved by the State Bar or offered by a State Bar approved provider completed prior to the effective date of the program.

(c) Each active member of the State Bar (1) not exempt under Business and Professions Code section 6070, (2) not a **full-time employee of the United States Government**, its departments, agencies, and public corporations, acting within the scope of his or her employment, and (3) not **otherwise exempt under rules adopted by the Board of Governors** of the State Bar, shall, **within 36-month periods** designated by the State Bar, complete at least 36 hours of legal education approved by the State Bar or offered by a State Bar-approved provider. Eight of those hours shall address legal ethics or law practice management, four hours of which shall be in legal ethics. Members may be required to complete legal education in other specified areas within the 36-hour requirement under rules adopted by the State Bar. Each active member shall

report his or her compliance to the State Bar under rules adopted by the Board of Governors of the State Bar.
(d) A member of the State Bar who fails to satisfy the requirements of the State Bar's minimum continuing legal education program shall be enrolled as an inactive member of the State Bar under rules adopted by the Board of Governors of the State Bar.
(e) The State Bar shall have the authority to set and collect appropriate fees and penalties.

Fact No. 63: (Judicial Notice.) Rule of Court 958 purports to grant exemptions to members of the State Bar in addition to those exemptions granted by Bus. & Prof. Code sec. 6070.

Fact No. 64: (Judicial Notice.) Active members of the State Bar who are full-time employees of the United States Government are exempted from the requirements of the MCLE program by reason of California Rules of Court no. 958, even though they may practice law.

Fact No. 65: (Judicial Notice.) Being a full-time employee of the United States Government does not, in itself, tend to show the current knowledge of such a member of the State Bar in the special subjects of legal ethics and law practice management, or the general subjects addressed by MCLE approved providers.

Fact No. 66: (Judicial Notice.) There are no rational grounds for concluding a priori that active members of the State Bar who are full-time employees of the United States Government are more current or knowledgeable in the special subjects of legal ethics and law practice management, or the various general subjects addressed by State Bar approved providers, than any other member of the State Bar.

Fact No. 68: (Judicial Notice.) Rule 6 of the MCLE Rules and Regulations, purports to provide for the exemption of members of the State Bar in addition to those exemptions specifically granted by Bus. & Prof. sec. 6070 or Rule 958. Thus, Rule 6, in pertinent part, provides as follows:

6.0 SPECIAL CASES AND EXEMPTIONS
6.1 Prescribed Exemptions
In accordance with Business and Professions Code section 6070 and California Rule of Court 958, the following are exempt from the continuing legal education requirements:

* * *

6.1.4. Full-time employees of the State of California acting within the scope of their employment. For the purposes of this section, "full-time employees of the State of California acting within the scope of their employment" shall refer to members employed by the State of California as attorneys or Administrative Law Judges on a permanent or probationary basis, regardless of their working hours, who do not practice law in California except as employees of the State of California; and

6.1.5. Full-time employees of the United States Government, its departments, agencies, and public corporations, acting within the scope of their employment. For the purposes of this section, "full-time employees of the United States Government, its departments, agencies, and public corporations, acting within the scope of their employment" shall refer to members employed by the United States Government, its departments, agencies, and public corporations, as attorneys or Administrative Law Judges on a permanent or probationary basis, regardless of their working hours, who do not practice law in California except as employees of the Government of the United States, its departments, agencies,

and public corporations.

6.2. Good Cause Exemption From or Modification of Requirement

A member may file a written request setting forth good cause for an exemption from compliance with or modification of any of the requirements, including an extension of time for compliance, in accordance with a procedure to be established by the Committee on Minimum Continuing Legal Education.

Fact No. 69: (Judicial Notice.) Rule 6.2.1. of the MCLE Rules and Regulations purports to grant members who have requested and denied exemption, due process of law rights not afforded other members who have been suspended from the practice of law by reason of their alleged failure to comply with the MCLE educational requirements. Thus, Rule 6.2.1. provides as follows: Should the decision be adverse to the member, the member may appeal such decision pursuant to the provisions of California Rule of Court 952(c).

Fact No. 70: (Judicial Notice.) Members of the State Bar who are attorneys or Administrative Law Judges employed by the State of California are exempted from the requirements of the MCLE program by Rule 6.1.4 of the MCLE Rules and Regulations, even though they may practice law. (Admitted as to Administrative Law Judges by State Bar's response to plaintiff's Request for Admission no. 96.)

Fact No. 71: (Judicial Notice.) There are no rational grounds for concluding that members of the State Bar who are attorneys or Administrative Law Judges employed by the State of California, no matter how knowledgeable they may be in their own respective areas of specialized practice, are more current or knowledgeable in the special subjects of legal

ethics and law practice management, or the various general subjects addressed by State Bar approved providers, than any other member of the State Bar.

Fact No. 72: (Judicial Notice.) Guidelines promulgated by a Committee of the State Bar set forth "advisory interpretations" of the MCLE Rules and Regulations, which purport to authorize the State Bar to grant additional exemptions to the mandatory educational requirements than those expressly granted by Bus. & Prof. Code sec. 6070, California Rule of Court 959, or the MCLE Rules and Regulations.

Fact No. 73: (Judicial Notice.) Members of the State Bar who are retired judges of courts other than the courts of the State of California, are exempted from the requirements of the MCLE program by a "guideline" issued by a committee of the State Bar which guideline is said committee's interpretation of Rule 6.1.1 of the MCLE Rules, even though such members may practice law. (Admitted by State Bar's response to plaintiff's Request for Admission no. 98.)

Fact No. 74: (Judicial Notice.) The "interpretation" granting exemption from the mandatory educational requirements of the MCLE program is not expressly authorized by either the Legislature or the Supreme Court of the State of California.

Fact No. 75: (Judicial Notice.) Being a member of the State Bar who is a retired judge whose judicial service was with a court or courts other than the California courts, does not, in itself, tend to show the currency or knowledge of such a member of the State Bar in the special subjects of legal ethics and law practice management, or the general subjects addressed by MCLE approved providers.

Fact No. 76: (Judicial Notice.) There are no rational grounds for concluding that active members of the State Bar who are retired judges whose judicial services were with a court or courts other than the California courts, no matter how much legal knowledge such judges may have acquired during their tenure as judges, are more current or knowledgeable in the special subjects of legal ethics and law practice management, or the various general subjects addressed by State Bar approved providers, than any other member of the State Bar.

Fact No. 77: (Judicial Notice.) Rule 6.2 of the MCLE Rules and Regulations purports to authorize administrators of the MCLE program to grant exemptions to individual members of the State Bar on a showing of "good cause", thereby creating a classification for exemption which is not authorized by either Bus. & Prof. Code sec. 6070 or California Rule of Court 958.

Fact No. 78: (Judicial Notice.) Neither Bus. & Prof. Code sec. 6070, California Rule of Court 958, nor the MCLE Rules and Regulations include or incorporate by reference any standards for determining what constitutes "good cause" for the exemptions referred to in Rule 6.2. (Admitted as to MCLE Rules and Regulations by State Bar's response to plaintiff's Request for Admission no. 104.)

Fact No. 79: (Judicial Notice.) Members of the State Bar who are exempted from the requirements of the MCLE program, whether by act of the Legislature of the State of California or the Rules of the MCLE program or grant by administrators of the MCLE program, program, or otherwise, may lawfully prepare and interpret legal documents, give advice

or take legal action which directly or indirectly affects the general public and/or persons whose economic or personal rights and interests are subject to State action, deal with and/or oppose other members of the State Bar in matters affecting the interests of such other members and their clients, and appear before the courts of the State of California in positions adverse to the interests of clients of other members of the State Bar.

Fact No. 80: Rules 6.0, 6.1, 6.1.1, 6.1.2, 6.1.3, 6.1.4, 6.1.5, and 6.2, of the MCLE Rules, provide that members of the State Bar who are also members of certain named classes of persons entitled to practice law in California are exempt from the continuing legal education requirements of the MCLE program. (Admitted by State Bar's response to plaintiff's Request for Admission no. 107.)

Fact No. 81: Rule 6.0 and its subparts exempts from the continuing legal education requirements of the MCLE program members of the State Bar who may give legal advice, prepare legal documents, appear before the courts of California, and otherwise engage in both general and specialized legal practice. (Admitted by State Bar's response to plaintiff's Request for Admission no. 108.)

Fact No. 82: Those members of the State Bar who are exempt from the continuing legal education requirements of the MCLE program by reason of Rule 6.0, including its applicable subparts, may engage in the practice of law in competition with those members of the State Bar who are not exempt from such requirements.

Fact No. 83. Plaintiff, and other members of the State Bar who similarly are not members of the classes exempted from the con-

tinuing legal education requirements of the MCLE program by Rule 6.0 and its subparts, are disfavored over the members of the State Bar who are exempted by Rule 6.0 and its subparts.

Fact No. 84. The State Bar has not prepared or considered any studies determining whether members of the State Bar who are exempted from compliance with the educational requirements of the MCLE program are more competent, knowledgeable, or current in legal ethics, office management, the law, or the obligations and standards of the profession, than members of the State Bar who are not exempted from compliance with the educational requirements of the MCLE program. (Admitted by State Bar's response to plaintiff's Request for Admission no. 111.)

Fact No. 85: (Judicial Notice.) The ostensible purpose of the MCLE program, as declared by Rule 1.0 of the MCLE Rules and Regulations, is to assure that active members of the State Bar remain current regarding the law, the obligations and standards of the profession, and the management of their practices.

Fact No. 86: The ostensible purpose of the MCLE program, as declared by the President of the State Bar announcing its commencement, was to improve the competence of lawyers to the benefit of the public. (Admitted by State Bar's response to plaintiff's Request for Admission no. 114.)

Fact No. 87: The MCLE program does not require or provide for the testing of members of the State Bar in the process of complying with the educational requirements of the MCLE program to determine whether or not such members are achieving, whether by self-study or participation in provider or other programs approved

by MCLE program administrators, any improvement in their competency or currency in their knowledge of legal ethics, office management, the law in general, or the obligations or standards of the profession. (Admitted by State Bar's response to plaintiff's Request for Admission no. 116.)

Fact No. 88: The State Bar has not prepared or reviewed any studies determining whether members of the State Bar in compliance with the educational requirements of the MCLE program to determine whether or not such members have achieved, whether by self-study or participation in provider programs approved by MCLE program administrators, any improvement in their competency or are current in their knowledge of legal ethics, office management, the law in general, or the obligations or standards of the profession. (Admitted by State Bar's response to plaintiff's Request for Admission no. 117.)

Fact No. 89: (Judicial Notice.) Rule 6.0 and its several subparts of the MCLE Rules, as written and interpreted by the State Bar, violates the Equal Protection clause of the Constitution of the United States.

Fact No. 90: (Judicial Notice.) Rule 6.0 and its several subparts of the MCLE Rules, as applied to plaintiff and all other members similarly situated, violates the Equal Protection clause of the Constitution of the United States.

Fact No. 91: (Judicial Notice.) Rule 6.0 and its several subparts of the MCLE Rules, as written and interpreted by the State Bar, violates the Equal Protection clause of the Constitution of the State of California.

Fact No. 92: (Judicial Notice.) Rule 6.0,

and its several subparts of the MCLE Rules, as applied to plaintiff and all other members similarly situated, violates the Equal Protection clause of the Constitution of the State of California.

Fact No. 93: (Judicial Notice.) The Legislature of the State of California, by enactment of Section 6070 of the Business and Professions Code, directed that the authorized mandatory continuing legal education program require that all active members of the State Bar shall, "within designated 36 month periods", complete at least 36 hours of legal education activities", and that a member who fails to satisfy such requirements "shall be enrolled as an inactive member". (Admitted by State Bar's response to to plaintiff's Request for Admission no. 122.)

Fact No. 94: (Judicial Notice.) The MCLE program, as written by the State Bar and applied to plaintiff and other members whose last names begin with the letters N through Z, requires that during the initial compliance period beginning February 1, 1992, such members complete at least 12 hours of legal education activities within a designated 12 month period, and that members of the State Bar, including plaintiff, who fail to satisfy such requirements, be enrolled as inactive members. (Admitted by State Bar's response to plaintiff's Request for Admission no. 123.)

Fact No. 95: (Judicial Notice.) Rules 3.0, 3.1, 3.2, 3.3, and 3.4, of the MCLE Rules, in substance and effect, provide that members whose last names commence with the letters N through Z, must prove compliance by January 31, 1993, that members whose last names commence with the letters H through M, have until January 31, 1994, to prove compliance, and that members whose last names commence with

the letters A through G, have until January 31, 1995, to prove compliance. (Admitted by State Bar's response to plaintiff's Request for Admission no. 125.)

Fact No. 96: (Judicial Notice.) Rules 3.0, 3.1, 3.2, 3.3, and 3.4, of the MCLE Rules, in substance and effect, provide that members whose last names commence with the letters N through Z, i.e., plaintiff's group, who must prove compliance by January 31, 1993, are disfavored over members whose last names commence with the letters H through M, who have until January 31, 1994, to prove compliance in that the latter group have one more year within which to establish compliance and thus one more year within which they can practice law than plaintiff and others similarly situated before complying or ceasing the practice of law.

Fact No. 97. (Judicial Notice.) Rules 3.0, 3.1, 3.2, 3.3, and 3.4, of the MCLE Rules, in substance and effect, provide that members members whose last names commence with the letters N through Z, i.e., plaintiff's group, who must prove compliance by January 31, 1993, are disfavored over members whose last names commence with the letters A through G, who have until January 31, 1995, in that members of this latter group have two more years within which to establish compliance and thus two more years within which they can practice law than plaintiff and others similarly situated before complying or ceasing the practice of law.

Fact No. 98: (Judicial Notice.) Rules 3.0, 3.1, 3.2, 3.3, and 3.4, of the MCLE Rules, as written, violate the Equal Protection clause of the United States Constitution.

Fact No. 99: (Judicial Notice.) Rules 3.0,

3.1, 3.2, 3.3, and 3.4, of the MCLE Rules, as applied to plaintiff and all other members similarly situated, violate the Due Process clause of the United States Constitution.

Fact No. 100: (Judicial Notice.) Rules 3.0, 3.1, 3.2, 3.3, and 3.4, of the MCLE Rules, as written, violate the Equal Protection clause of the Constitution of the State of California.

Fact No. 101: (Judicial Notice.) Rules 3.0, 3.1, 3.2, 3.3, and 3.4, of the MCLE Rules, as applied to plaintiff and all other members similarly situated, violate the Due Process clause of the Constitution of the State of California.

Fact No. 102: The educational requirements of the MCLE program, to the extent that they apply to members of the State Bar who are not exempt from complying with such requirements, are not uniform in either their subject matter, referred to by the Rules as "activity", or their content. (Admitted by State Bar's Response to plaintiff's Requests for Admission Nos. 134 and 135.)

Fact No. 103: All members of the State Bar who must comply with the educational requirements of the MCLE program are not required to participate in programs, with the exception of programs whose subject matters are legal ethics, law management practice, prevention, detection, and treatment of substance abuse and emotional distress, and elimination of bias, which all have the same subject matter. (Admitted by State Bar's response to plaintiff's Request for Admission no. 134.)

Fact No. 104: The programs approved by the MCLE program dealing with the same subject matter are not uniform in their content.

(Admitted by State Bar's response to plaintiff's Request for Admission no. 135.)

Fact No. 105: (Judicial Notice.) Classifications of members of the State Bar, whether by the Board of Governors of the State Bar, the California Supreme Court, or the Legislature of the State of California, which provide unequal treatment of members engaged in the same or substantially the same type of business activity, violate the Equal Protection clauses of both the Federal and State Constitutions.

Fact No. 106. (Judicial Notice.) A classification of members of the State Bar, whether by the Board of Governors of the State Bar, the California Supreme Court, or the Legislature of the State of California, which infringes on a member's right to practice law, must be closely scrutinized by the courts and may be upheld only if it is necessary for the furtherance of a compelling state interest.

Fact No. 107: Administrators of the MCLE program enrolled plaintiff as an inactive member of the State Bar without first affording him a hearing. (Admitted by State Bar's response to plaintiff's Request for Admission no. 138.)

Fact No. 108: (Judicial Notice.) Rule 14.1 provides that enrollment of a member of the State Bar as an inactive member for failure to comply with MCLE educational requirements may be done by the Board of Governors, or by an officer of the State Bar, or by the designee of an officer of the State Bar.

Fact No. 109: (Judicial Notice.) Rule 14.1 is an unlawful delegation of authority invested in the Supreme Court of the State of

California.

Fact No. 110: (Judicial Notice.) Rule 14.2 purports to establish that enrollment of a member of the State Bar as an inactive member pursuant to the MCLE Rules is "administrative in nature and no hearing is required". (Admitted by State Bar's response to plaintiff's Request for Admission no. 138.)

Fact No. 111: (Judicial Notice.) By its enactment in 1989 of Sec. 6070 of the Business and Professions Code, the Legislature of the State of California directed that enrollment of a member of the State Bar as an inactive member for failure to comply with the mandatory continuing legal education requirements should be pursuant to rules adopted by the Board of Governors of the State Bar.

Fact No. 112. (Judicial Notice.) By its adoption in 1990 of Rule 958, the California Supreme Court directed that enrollment of a member of the State Bar as an inactive member for failure to comply with the minimum continuing legal education requirements should be pursuant to rules adopted by the Board of Governors of the State Bar. (Admitted by State Bar's response to plaintiff's Request for Admission no. 142.)

Fact No. 113: (Judicial Notice.) Other than promulgating Rule 14.0 and its subparts, which set forth no rules which afford a member the right to a hearing, the State Bar promulgated no special rules setting forth procedures for enrolling a member of the State Bar as an inactive member for failure to comply with MCLE requirements.

Fact No. 114: (Judicial Notice.) Sec. 6007 of the Business and Professions Code provides for hearings for members of the State

Bar whose conduct posed "a substantial threat of harm to the attorney's clients or the public" before such members may be suspended from the practice of law, but there are no rules which provide for hearings for members of the State Bar who have failed to comply with the MCLE program before such members are suspended from the practice of law.

Fact No. 115: (Judicial Notice.) The action of the State Bar in affording members of the State Bar who failed to comply with the requirements of the MCLE program less due process of law than it affords to members of the State Bar whose conduct poses a substantial threat of harm to the attorney's clients or the public, is arbitrary and capricious.

Fact No. 116: (Judicial Notice.) Statutes enacted by the California State Legislature, Rules adopted by the California Supreme Court, or Rules adopted by the State Bar, which deny a member of the State Bar due process of law are unconstitutional under both the Federal and State Constitutions.

Fact No. 117: (Judicial Notice.) Actions taken by the Board of Governors of the State Bar, officers of the State Bar, administrators of the State Bar, or administrators of the MCLE program, which deny a member of the State Bar due process of law are unconstitutional under both the Federal and State Constitutions.

Fact No. 118: (Judicial Notice.) The right of a member of the State Bar to practice his profession is a property right which cannot be taken from such member without due process of law.

Fact No. 119: (Judicial Notice.) The Board of Governors of the State Bar, officers of

the State Bar, administrators of the State Bar, and administrators of the MCLE program are fiduciaries of plaintiff and all other members of the State Bar.

Fact No. 120: (Judicial Notice.) The Board of Governors of the State Bar, officers of the State Bar, administrators of the State Bar, and administrators of the MCLE program have a duty to act fairly toward and in good faith with plaintiff and all other members of the State Bar. (Admitted by State Bar's response to plaintiff's Request for Admission no. 154.)

Fact No. 121: (Judicial Notice.) In enrolling plaintiff, and all other members of the State Bar similarly situated, as inactive members of the State Bar, the Board of Governors of the State Bar, officers of the State Bar, administrators of the State Bar, and/or administrators of the MCLE program so acting, acted under color of state law.

Fact No. 122: (Judicial Notice.) The State Bar's enrollment of plaintiff, and all other members of the State Bar similarly situated, situated, as inactive members for failure to comply with the requirements of the MCLE program was contrary to the Due Process clauses of both the Federal and State Constitutions.

Fact No. 123: As a consequence of the State Bar's sending of the notices of suspension referred to in Facts Nos. 24 and 27, which notices were sent on a form which included notices that certain other attorneys had been disbarred or otherwise disciplined, the United States District Court for the Northern District of California ordered plaintiff to show cause why he should not be barred from practice before that court.

Fact No. 124: In the course of the "show cause" hearing referred to in Fact No. 124, the Federal judge presiding referred to plaintiff as a "disbarred" attorney, and refused to consider the merits of plaintiffs' showing in which plaintiff had particularized his contentions that the MCLE program and his suspension by the State Bar violated the Due Process and Equal Protection clauses of the United States Constitution.

Fact No. 125: At the time the Federal judge referred to plaintiff as a "disbarred" attorney, as referred to in Fact No. 124, the courtroom contained numerous other attorneys waiting to have their matters heard, and the judge's reference to plaintiff as a "disbarred" attorney caused plaintiff great humiliation and embarrassment, and so confused him as to substantially inhibit his ability to effectively plead his cause.

Fact No. 126: Colin Wong, an Assistant General Counsel for the State Bar, having the same rank and title as the defendant Carole Rossi, has admitted to declarant that he is required to comply with the MCLE program's educational requirements, that is to say, that he is not exempt from MCLE under the governmental employee or any other category of exemption, from which fact it is inferable that the defendant Carole Rossi is not a governmental employee.

Fact No. 127: On July 16, 1993, defendant Lorna Maynard discussed plaintiff's letter of July 9, 1993, with her superior, Phyllis Culp, Director, Legal Unit, Office of Certification, and on that same day, July 16th, **telefaxed** plaintiff's letter of July 9th to defendant Carole Rossi. (Defendant Maynard's answers to Plaintiff's Special Interrogatories, Nos. 11 and 12.)

Fact No. 128: Defendant Lorna Maynard has refused to answer plaintiff's Special Interrogatory No. 14, seeking disclosure of the contents of the discussion referred to in Fact No. 127. (Defendant Maynard's response to plaintiff's Special Interrogatory No. 14.)

Fact No. 129: Defendant Lorna Maynard did not have a conversation with any person in the Office of General Counsel concerning plaintiff's letter of July 9, 1993, prior to sending said letter to defendant Carole Rossi. (Defendant Maynard's answers to plaintiff's Special Interrogatory Nos. 15, 16.)

Fact No. 130: It is inferable, plaintiff so infers, and the court should infer, from Facts Nos. 127, 128, and 129, that Lorna Maynard's superior, Phyllis Culp, on July 16, 1993, had a conversation with the defendant Carole Rossi concerning plaintiff's letter of July 9, 1993.

Fact No. 131: It is inferable, plaintiff so infers, and the court should infer, from Facts Nos. 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31, 32, 33, 34, 35, 127, 128, and 129, and 130, that defendant Carole Rossi knew that plaintiff's contentions concerning the unconstitutionality of the MCLE program were well founded, and delayed reply to plaintiff's letter of July 9, 1993, until October 22, 1993, so as to allow the suspension proceedings involving plaintiff and some 412 other members of the State Bar similarly situated, to proceed to suspension by the Board and the subsequent notices of suspension to the 588 courts, agencies, and bar associations, as a result of which such economic pressures would be exerted upon plaintiff as would compel him to abandon his contentions of unconstitutionality.

Fact No. 132: It is inferable, plaintiff infers, and the court should infer, from Facts Nos. 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27, 28, 39, 30, 31, 32, 33, 34, 35, 127, 128, 129, 130, and 131, that Phyllis Culp, and the defendants Lorna Maynard and Carole Rossi, on and after July 16, 1993, planned to delay acknowledgment that plaintiff's letter of July 9, 1993, had been received by the State Bar, and had been referred to the defendant Rossi on July 23, 1993, the date of Maynard's letter to plaintiff acknowledging receipt of plaintiff's letter of July 9, 1993, so as to make it appear that plaintiff's suspension by the Board of Governors had occurred before defendants had opportunity to consider plaintiff's contentions.

Fact No. 133: It is inferable, and plaintiff so infers, and the court should infer, from Facts Nos. 15, 16, 17, 18, 19, 20, 21, 22, 24, 27, 28, 39, 30, 31, 32, 33, 34, 35, 127, 128, 129, 130, 131 and 132, that Phyllis Culp, and defendants Lorna Maynard and Carole Rossi, and possibly other MCLE State Bar employees, realized that if plaintiff persisted in pressing his claims that the MCLE program was unconstitutional, their employments would be in jeopardy, and so planned and acted as to allow or cause plaintiff to be suspended from the practice of law, and the notices of his suspension to be broadcast to the courts, agencies, and bar associations of the United States, so as to inflict great economic hardship upon plaintiff and thereby discourage him from pressing his claims of unconstitutionality, to the protection of their employments and personal interests.

Fact No. 134: Plaintiff did not request being enrolled as an inactive member of the

State Bar and made timely objection to his involuntary enrollment as an inactive member.

Fact No. 135: The defendant State Bar did not enroll plaintiff as an inactive member of the State Bar pursuant to the provisions and procedures of Bus. & Prof. Code sec. 6007 or any of its subparts.

Fact No. 136: In enrolling plaintiff as an inactive member of the State Bar, defendant State Bar and its individual officers and employees so acting, acted ultra vires and are liable for all damages suffered by plaintiff as a consequence of such enrollment.

Fact No. 137: Assuming that a member charges his clients for his services at an hourly rate of $150/hr, which is what plaintiff charged in 1992-93 and which is probably somewhat less than the average rate for California attorneys, that his compliance program is 1/2 by self-study and 1/2 by attending seminars by professional providers, and that the average provider fee is $200 per 3 hour session, and that two hours of travel time are required to come and go from each 3 hour session, declarant estimates that the average member's cost to comply with the MCLE program is approximately $7,500 for each 12 hours of MCLE compliance, an expense which must be borne by the member in the form of reduced leisure or work time, and, one way or another, passed on to his clients in the form of increased fees and/or diminished service.

Fact No. 138: Plaintiff believed that he had a period of three years, as provided by Bus. & Prof. Code sec. 6070 and Rule of Court 958, within which to either comply with the educational requirements of the MCLE program or retire. However, the compliance groups set

up by MCLE Rule 3, contrary to the mandates of the Legislature and the Supreme Court that active members shall have a period of 36 months within which to prove compliance or suffer suspension disfavors plaintiff and other members similarly situated by reason of their names, favors other members, who, by reason of their names have either 24 months or 36 months within which to prove compliance, and substantially damaged plaintiff and other active members approaching retirement age by denying them the opportunity to practice law for periods of one and two years during which compliance was not required of the more favored members.

Fact No. 139: As a consequence of the notice referred to in No. 24 above, the Chief Judge of the United States District Court of the Northern District of California issued an order to plaintiff to show cause why he should not be barred from the practice of the law before said Court.

Fact No. 140: Plaintiff responded to the "show cause" order referred to in No. 139 above by filing a written declaration setting forth facts and case authority showing that the MCLE program, as written and as applied to him, was violative of the Equal Protection and Due Process clauses of the United States Constitution.

Fact No. 141: In the course of the "show cause" hearing referred to in Nos. 139 and 140 above, the United States District Court judge assigned to hear the matter, referred to plaintiff as a "disbarred attorney".

Fact No. 142: At the time the judge referred to in No. 141 referred to plaintiff as a "disbarred attorney", the courtroom was occupied by numerous attorneys waiting for their resp-

ective cases to be heard, and the court's reference in such company caused plaintiff great humiliation and embarrassment.

CONDITIONAL REQUEST FOR CONTINUANCE TO OBTAIN DISCOVERY

Plaintiff believes that he has made a presentation in opposition to defendants' motions to warrant their denial out of hand. However, in the event the court is not so disposed, plaintiff requests an extended continuance of these motions sufficient in duration to allow him to present motions to compel further responses to interrogatories by the State Bar, Maynard and Rossi, and for further production of documents already requested of the State Bar.

The State Bar has refused to produce its budget figures for requested years prior to 1991 or to disclose the costs of MCLE. This data is required to show the court that MCLE is an expensive boon-doggle and to support plaintiff's contentions that defendants deceived him in the matter of the July 16-23, 1993, events and brought about his suspension for purposes of personal gain.

Defendants have also refused to disclose communications between defendants and the Board of Governors and between each other concerning plaintiff's inquiries concerning constitutionality and the events of July 16-23, 1993, and Rossi's reply to plaintiff of October 22, 1993. This information is necessary to show the nature and extent of the conspiracy to dissuade plaintiff from pressing his constitutional objections, and to assist in establishing liability for "bad faith", fraudulent conspiracy, Civil Rights Act violations, and punitive damages.

The requested information is entirely within defendants' control and plaintiff has no means of obtaining it except through

the requested discovery. Depending on the content and candor of defendants' further responses, plaintiff will want to take the depositions of Maynard, Rossi, and Culp, as well as other knowledgeable State Bar personnel. Based upon his past experiences in this case and the nature of the information plaintiff seeks, which promises to be most destructive of the Bar's position, plaintiff believes that a period of 6 months will be required to accomplish these ends.

WHEREFORE, plaintiff prays that defendants' motions for summary judgment and summary adjudication of issues be denied, or, in the alternative, that opportunity for discovery be afforded pursuant to CCP 437c(h).

Executed under penalty of perjury on August 13, 1995, at San Diego, California.

_____

Lew Warden, Plaintiff.

APPENDIX K

APPELLANT'S OPENING BRIEF
CALIFORNIA COURT OF APPEAL
(Filed April 2, 1996)
(Title page omitted)

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(Elements omitted)

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C. The State Bar's Suspension of Appellant Without Prior Hearing Was Not Authorized by Either the Legislature or the Supreme Court.

D. The State Bar's MCLE Program Violates the Equal Protection Clauses of the Federal and State Constitutions.

* * *

F. Respondents Are Liable to Appellant Under the Federal Civil Rights Acts.

* * *

APPENDIX L

APPELLANT'S CLOSING BRIEF
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(Filed May 16, 1996)
(Title page omitted)

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D. The State Bar May Not Compel Compliance With an Unconstitutional Program as a Condition for Continuing the Right to Practice Law.

E. Appellant's Right to Practice Law Could Not Be Suspended Without a Prior Due Process Hearing.

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APPELLANT'S RESPONSE TO OTHER CONTENTIONS BY RESPONDENTS

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B. Respondents Are Not Immune From Federal Civil Rights Acts or State Fraud Liability.

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* * *

APPENDIX M

APPELLANT'S PETITION FOR REHEARING
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(Title page omitted)

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(Elements omitted)

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B. The Court Errs in Concluding That The Due Process Issues Are Moot Because of Its Disposition of The Equal Protection Issues.

* * *

C. The Court Errs in Concluding That Appellant is Not Entitled to Recover Damages Under the Federal Civil Rights Acts For Deprivation of His Constitutional Rights to Equal Protection and Due Process of Law.

D. The Court Errs in Concluding That There Is No Fundamental Right to Continue to Engage in an Established Occupation, in This Case The Practice of Law.

E. The Court Errs in Concluding That Th State Bar and The Individual Defendants Are Immune From Liability For Their Misconduct Shown by The Facts of This Case.

* * *

APPENDIX N

APPELLANT'S PETITION FOR REVIEW
CALIFORNIA SUPREME COURT
(Filed April 17, 1997)
(Title page omitted)

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(Elements omitted)

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2. Additional due process violations were practiced upon appellant by fraud and deceit.

B. The State Bar's Suspension of Appellant's Right to Practice Law, Especially Without First Affording Him a Hearing, Violated Due Process of Law.

C. Appellant Has Both Pleaded and Produced Sufficient Facts to Prove a Cause of Action for Damages Under the Federal Civil Rights Acts and in Tort.

D. The Court of Appeal Erred in Concluding That The Due Process Issues Are Moot Because of Its Disposition of The Equal Protection Issues.

* * *

E. The Court of Appeal Erred in Its Conclusion That The State Bar and The Individual Respondents Are Immune From Liability

For Their Misconduct Shown by The Facts of This Case.

* * *

APPENDIX O

APPELLANT'S REPLY BRIEF
CALIFORNIA SUPREME COURT
(Filed August 19, 1997)
(Title page omitted)

TABLE OF CONTENTS
(Elements omitted)

III. STATEMENT OF FACTS

A. The Proceedings in the Trial Court Established that Respondents Acted to Protect the Constitutionally Deficient MCLE Program from Timely Judicial Scrutiny by Taking Draconian and, in Appellant's Case, Fraudulent Means to Coerce Compliance and to Discourage Judicial Challenge.

IV. ARGUMENT

A. This Court Has Plenary Authority to Strictly Scrutinize MCLE For Compliance With State and Federal Standards For Equal Protection, Substantive and Procedural Due Process, And Also for Purpose, Necessity, Reasonableness, Efficiency, or Economy.

1. In the event the Court finds the MCLE program unconstitutional in any particular, it should remand the program to the State Bar for further study and in-put by the membership.

2. Appellant makes no contention that an appropriate CLE program would not serve a legitimate public purpose, but does sincerely believe that the present program, independently of the constitutional issues, should be seriously

reconsidered.

3. Appellant and respondents agree that the Legislature did not mandate MCLE; it merely directed the State Bar to "request" this Court to adopt a rule authorizing the State Bar to create and administer a mandatory CLE program.

4. The power to regulate the practice of law in California reposes exclusively in the California Supreme Court.

5. This Court's plenary authority to regulate the practice of law moots the State Bar's contention that the Court of Appeal erred in its application of the "rational basis" test.

B. The Court of Appeal Correctly Concluded that Bus. & Prof. C. sec. 6070, Rule 958, and MCLE Invidiously Discriminate Against Appellant and Other California Lawyers by Exempting Numerous Classes of Attorneys Who Also Practice Law in California, and Thereby Violate the Equal Protection Clauses of the State and Federal Constitutions.

1. None of the exemptions granted serve the purpose of MCLE to maintain the currency of California lawyers or any other legitimate state purpose.

2. The Court of Appeal correctly concluded that the exemptions it considered were politically inspired. However, the Court of Appeal could not know, because the State Bar was not forthcoming, that it and a single

Senator, and not the California Legislature, were the major political players in this scenario, and that the State Bar officials had in fact made a conscious decision to request the Legislature to authorize a program which provided for discriminatory exemptions and thus did not afford the Legislature as a whole fair opportunity to authorize a program which applied equally to all California lawyers.

3. The Court of Appeal correctly concluded that the State Bar's claim that the purpose of MCLE is to protect the public from lawyers who serve individual private clients was factually and logically unfounded, that there are classes of California attorneys who do not represent individual clients and others who represent public agencies, although not at the state or federal level, who are not exempt, and that members of the exempt classes commonly do represent individual private clients.

4. No evidence exists to show a need for MCLE or that MCLE furthers the stated purpose of maintaining the currency of California lawyers or enhancing their competency.

5. The State Bar reveals a constitutionally impermissible elitist bent by contending, a priori, that attorneys who represent individual clients are more likely to need continuing education, i.e., are less competent and less ethical, than the exempted classes of attorneys.

6. There is no California authority for the State Bar's claim that a court reviewing a palpably discriminatory statute must accept

as a rational basis for the discrimination speculations of counsel which are inconsistent, irrational, or without a reasonable factual basis.

7. The Court of Appeal correctly concluded that its obligation under the so-called rational basis test was to "conduct a serious and genuine judicial inquiry".

8. The State Bar's claim that the impact of the exemptions is minimal is not borne out by the facts, and is not supported by any authority.

9. The Court of Appeal correctly ruled that Legislative decisions to "strike an evil where it is felt most" must be rationally based.

10. The invidious discriminations of the exemptions from MCLE, and the resulting unequal burden thrust upon appellant and other non-exempt California lawyers, are not reasonably related to a legitimate governmental purpose.

a. While the courts have an interest in assuring that all persons practicing law are competent, the present program--by the State Bar's argument applicable only to those attorneys who may serve individual private clients--completely misses the mark.

C. Appellant's Right to Practice His Established Profession Was a Vested Fundamental Right, a Right Which Controls Judicial Determination of the Constitutional Issues of Substantive and Procedural Due Process of Law and Equal Protection of the Laws.

1. Under California law, the right of an

individual to practice an established profession, once vested, is a constitutionally constitutionally protected "fundamental right".

2. Under federal law, the right to practice law is a "fundamental" right, a "liberty" protected by the Fifth and Fourteenth Amendments of the Constitution.

3. Respondents and the Court of Appeal ignored the essential distinction between pre-admission to practice rights, and the fully vested rights of an established law practice.

D. The State Bar's Initial Compliance Period Classifications Violated Equal Protection and Denied Appellant and Similarly Situated Attorneys Valuable Compliance-Time Rights Granted by Sec. 6070 and Rule 958.

1. The State Bar, solely on the basis of appellant's name and the names of other members similarly situated, invidiously discriminated against him by suspending him from practice for failing to complete 12 hours of approved study within one year, while allowing other members up to three years within which to complete 36 hours of study.

2. The State Bar's initial compliance period scheme denied appellant and other members the right granted by Sec. 6070 and Rule 958 to complete their 36 hours of approved study at any time within the three year period, rights which were extended to other members of the State Bar of different alphabetical classification.

E. The State Bar Violated Appellant's Right, and the Rights of All Other Attorneys Similarly Suspended, to Due Process of Law.

1. The State Bar deliberately evaded the Legislature's and this Court's directives that suspensions be in accordance with rules adopted by the State Bar.

2. Appellant's right to practice law was a form of property of which he could not lawfully be divested without a prior hearing meeting due process standards.

3. When the State Bar summarily suspended appellant and other members of the Bar from practice, ample procedural devices were in place for the State Bar's use.

4. Appellant had plainly made his objections to MCLE known and was entitled to have a hearing on the constitutional issues.

5. The State Bar's unconstitutional and draconian enforcement scheme is outrageous and ought to receive severe public censure.

F. Substantive Due Process of Law Forbids the State to Deprive a Person of the Right to Practice His Profession for Trivial or Insubstantial Reasons.

G. Suspension From Practice for Failure to Comply With MCLE Constitutes an Excessive Fine or Cruel and Unusual Punishment.

H. Appellant Suffered Substantial Damages Because of Respondents' Conduct For Which He is Entitled to Compensation Under the Federal Civil Rights Acts and State Tort Law.

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APPENDIX P

APPELLANT'S PETITION FOR REHEARING
CALIFORNIA SUPREME COURT
(Filed September 10, 1999)
(Caption omitted.)

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ARGUMENT

A. The Court Has Omitted to Consider Relevant Facts and Major Constitutional and Remedial Issues Duly Presented For Adjudication, Thereby Denying Appellant Due Process of Law.

B. The Court's Disposition of The Equal Protection Issues Is Irrational and Not In Accordance With Settled State and Federal Precedent.

C. The Majority Opinion Has Failed to Recognize and Respond to the Analyses and Conclusions of the Dissenting Opinions That the "Rational Relationship" Test Is Inappropriate to a Review of the Court's Own Rule and Was Misapplied in Any Event.

D. "Strict Scrutiny" of Equal Protection Infringements Is Mandated Under Both State and Federal Precedent Because Appellant's Right to Practice His Established Profession Is a "Fundamental Right" Protected by the Due Process and Privileges and Immunities Clauses.

E. Recent Federal Court Opinion Reinforces Justice Brown's Dissent Based Upon the Privileges and Immunities Clause.

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Lew Warden
Petitioner Pro Se
9121 E. Tanque Verde
#105-146
Tucson, Arizona 85749